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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN BERNARD DOMINGUEZ,

Defendant and Appellant.

B293054

(Los Angeles County
Super. Ct. No. BA429942)

APPEAL from an order of the Superior Court of Los Angeles County, Michael D. Abzug, Judge. Affirmed.

Alex Green, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted Juan Bernard Dominguez of one count of shooting at an inhabited dwelling (Pen. Code, § 246)¹ and two counts of attempted murder (§§ 187, subd. (a), 664). The jury found true the allegations the crimes were committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(C), (b)(4)), and a principal discharged a firearm, and Dominguez personally discharged a firearm, in the commission of the offenses (§ 12022.53, subds. (b), (c) & (e)(1)). On June 29, 2016, the trial court sentenced Dominguez to concurrent terms of 15 years to life for the attempted murders and stayed sentence for shooting at an inhabited dwelling (§ 654). The court also imposed a 20-year enhancement for firearm use under section 12022.53, subdivision (f).

Dominguez appealed. On May 24, 2018, we affirmed the judgment of conviction but remanded for a hearing to allow the trial court to consider whether to exercise the discretion granted to it by Senate Bill No. 620, effective January 1, 2018, to strike the section 12022.53 firearm enhancement. (*People v. Dominguez et al.* (May 24, 2018, B275920) [nonpub. opn.]) The Supreme Court denied review on August 29, 2018, and the remittitur issued on August 31, 2018.

At a hearing on August 8, 2018, Dominguez’s counsel noted there was a *Franklin/Miller* issue.² The trial court stated it would consider a written motion on the issue.

¹ All further statutory references are to the Penal Code.

² *People v. Franklin* (2016) 63 Cal.4th 261 and *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455, 183 L.Ed.2d 407] deal with punishment of juvenile offenders. *Franklin* provides the right to a hearing on factors relevant to the offender’s eligibility for parole. (*Franklin, supra*, at p. 290.) At

At the continued hearing on September 25, 2018, the trial court, in exercising its discretion whether to strike the firearm enhancement, acknowledged the mitigating factors in the case, including Dominguez’s youth, noting: “All things being equal, young people in this courtroom are given a second chance when I can do so.” The court also recognized Dominguez’s family support and the fact no one was injured in the commission of the crimes.

However, the court found “the case is aggravated as far as the defendant is concerned in a number of particulars, despite his youth, despite no one was hurt, and despite his family, [because] he actually discharged the weapon. He actually shot it into an occupied building.” The court also found Dominguez had shown “not a hint of remorse for what he has done,” adding: “And not even now has he taken the opportunity to address the [c]ourt and express any feelings of remorse. So the only conclusion that I can reach is the conclusion that I had when I imposed sentence to begin with, which is he’s dangerous. He’s a threat to the community” For that reason, the court “decline[d] to exercise its discretion to modify the sentence one day or to strike the gun enhancement.”

Dominguez’s counsel then requested a continuance to submit a *Franklin* motion. The trial court denied the request, noting that counsel “had now seven weeks to get something on file on the *Franklin* issue if you thought it was in your client’s best interests.” The court added that counsel was welcome to file

Dominguez’s original sentencing, which took place after *Franklin* was decided, his counsel did discuss various mitigating factors, including Dominguez’s “young age, lack of criminal record,” and minimal gang association. At the time of the shooting, Dominguez was 19 years old.

something “down the line.” The court was not going to act until counsel filed something, however.³ Counsel tried to explain that he raised the *Franklin* issue with Dominguez, who “did not want to talk about it, did not want me to proceed [with] it.” The court reiterated that if Dominguez wanted to file something on the issue, the court would consider it.

DISCUSSION

We appointed counsel to represent Dominguez on this appeal. After review of the record, Dominguez’s counsel filed an opening brief requesting this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. On April 12, 2019, we sent a letter to Dominguez, advising him that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. We received no response.

We have examined the entire record. We are satisfied that no arguable legal issues exist and that Dominguez’s counsel has fully complied with his responsibilities. By virtue of counsel’s compliance with the *Wende* procedure and our review of the record, we are satisfied that Dominguez received adequate and effective appellate review of the order entered against him in this case. (*People v. Wende, supra*, 25 Cal.3d at p. 441; accord, *People v. Kelly* (2006) 40 Cal.4th 106, 109-110.)

³ According to counsel, on March 9, 2019 the trial court granted Dominguez’s motion pursuant to *People v. Dueñas* (2019) 30 Cal.App.5th 1157 to vacate his restitution fine and court assessments based on inability to pay. There is nothing in the record before us to support this assertion.

DISPOSITION

The judgment is affirmed.

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JOHNSON, Acting P. J.

We concur:

BENDIX, J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.